

Exhibit 7

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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9

10 MARTHA S. PANASZEWICZ,
11 Plaintiff,

12 vs.

13 GMAC MORTGAGE, LLC; RESIDENTIAL
14 FUNDING COMPANY, LLC; and DOES 1
15 THROUGH 100, inclusive,
16 Defendants.
17

Case No.: 3:13-cv-01162-MEJ

*Assigned to Magistrate Judge
Maria-Elena James*

**PLAINTIFF'S OBJECTIONS TO
DEFENDANTS' NOTICE OF
BANKRUPTCY AND SUGGESTION OF
AUTOMATIC STAY**

Action Filed: January 28, 2013
Trial Date: None Set

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21 Plaintiff Martha S. Panaszewicz (Plaintiff) hereby submits her objections to Defendants'
22 notice of bankruptcy and suggestion of automatic stay, thus:
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25 1. The alleged protections of the automatic stay under the Bankruptcy Code did not and
26 do not arise with regard to Defendants who are the purported Debtors in a voluntary Chapter 11
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1 petition filed in the United States Bankruptcy Court for the Southern District of New York (the
2 “Bankruptcy case”).

3 2. The Bankruptcy case of Defendants was filed on May 14, 2012 (“Petition Date”).

4 3. The case at bar herein was filed on January 28, 2013 which was eight (8) months after
5 the Petition Date.

6 4. To be more precise, Plaintiff’s cause of action arose on November 20, 2012 which
7 was the date of the foreclosure sale of the subject property which was about six (6) months after
8 the Petition Date.

9 5. Section 362(a) of the Bankruptcy Code provides, among others, that a petition filed
10 under section 301, 302, or 303, of this title (which Defendants’ Bankruptcy case presumably is)
11 operates as a stay of – “(1) the commencement or continuation, including the issuance or
12 employment of process, of a judicial, administrative, or other action or proceeding against the
13 debtor that was or could have been commenced before the commencement of the case under this
14 title, or to recover a claim against the debtor that arose before the commencement of the case
15 under this title;” (11 U.S.C. § 362(a)(1); underscoring supplied)

16 5.1 The case at bar was commenced on January 28, 2013 which was certainly not
17 before the Petition Date of Defendants’ Bankruptcy case. Furthermore, the case at bar could not
18 have been commenced before the Petition Date because Plaintiff’s cause of action arose only on
19 November 20, 2012 which was long after the Petition Date of Defendants’ Bankruptcy case.

20 5.2 Therefore, the automatic stay protection under § 362(a)(1) of the Bankruptcy
21 Code does not apply to the Defendants in this case.

1 6. Section 362(a) of the Bankruptcy Code further operates as a stay of – “(3) any act to
2 obtain possession of property of the estate or of property from the estate or to exercise control
3 over property of the estate;” (*Id.* § 362(a)(3); underscoring supplied)

4 6.1 The term “property of the estate” is defined in 11 U.S.C. §541(a)(1) –

5 **“§ 541. Property of the estate**

6 (a) The commencement of a case under section
7 301, 302, or 303 of this title creates an estate. Such estate
8 is comprised of all the following property, wherever
9 located and by whomever held:

10 (1) x x x, all legal or equitable interests of
11 the debtor in property as of the commencement of
the case.”

12 (underscoring supplied)

13
14 6.2 As this case was commenced long after the Petition Date of Defendants’
15 Bankruptcy case and the subject property sought to be recovered is not property over which
16 Defendants possessed any legal or equitable interest in as of the Petition Date of their
17 Bankruptcy case, the subject property is not property of the estate.
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19 6.3 Furthermore, as any other property sought as relief by Plaintiff in the form of
20 damages, attorney’s fees and costs of suit were borne from conduct of Defendants long after the
21 Petition Date of the Bankruptcy case, such property would thus be outside the ambit of property
22 of the estate.
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24 6.4 Therefore, the automatic stay protection under § 362(a)(3) of the Bankruptcy
25 Code does not apply to the Defendants in this case.
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